



BRB Nos. 16-0405
and 16-0553

PAUL GILLIO)	
)	
Claimant-Respondent)	
)	
v.)	
)	
GCT NEW YORK, LP)	DATE ISSUED: <u>Mar. 6, 2017</u>
)	
and)	
)	
SIGNAL MUTUAL INDEMNITY)	
ASSOCIATION, LIMITED)	
)	
Employer/Carrier-)	
Petitioners)	DECISION and ORDER

Appeals of the Compensation Order Award of Attorney's Fees of Richard V. Robilotti, District Director, United States Department of Labor, and the Supplemental Decision and Order Denying in Part and Granting in Part Attorney's Fees and Costs and the Order Denying Employer/Carrier's Request for Partial Reconsideration of Theresa C. Timlin, Administrative Law Judge, United States Department of Labor.

Andrew R. Topazio (Marciano & Topazio), Union, New Jersey, for claimant.

Francis M. Womack, III (Law Office of Francis M. Womack, LLC), Iselin, New Jersey, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, BOGGS and BUZZARD, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Compensation Order Award of Attorney's Fees (OWCP No. 02-197831) of District Director Richard V. Robilotti and the Supplemental Decision and Order Denying in Part and Granting in Part Attorney's Fees and Costs and the Order

Denying Employer/Carrier's Request for Partial Reconsideration (2012-LHC-01657) of Administrative Law Judge Theresa C. Timlin rendered on a claim filed pursuant to provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). The amount of an attorney's fee award is discretionary and will not be set aside unless it is shown by the challenging party to be arbitrary, capricious, an abuse of discretion, or not in accordance with law. *Roach v. New York Protective Covering Co.*, 16 BRBS 114 (1984); *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

On December 30, 2015, the administrative law judge issued a Decision and Order Awarding Benefits to claimant. Claimant's attorney subsequently filed fee petitions with both the district director¹ and the administrative law judge,² seeking fees for work performed before them.

In his Compensation Order Award of Attorney's Fees, the district director awarded claimant's counsel the requested fees and costs of \$5,830, payable by employer. In her Supplemental Decision and Order, the administrative law judge, after finding that employer's objections to counsel's fee petition were untimely filed,³ disallowed a fee for three hours and costs of \$450, and awarded a fee payable by employer of \$27,555, representing 58.25 hours of attorney services at an hourly rate of \$425 and \$2,798.75 in costs. The administrative law judge denied employer's motion for reconsideration of her fee award.

Employer appeals the fee awards of both the district director, BRB No. 16-0405, and the administrative law judge, BRB No. 16-0553. Claimant responds, urging affirmance of the fee awards.

¹ For work performed before the district director, claimant's counsel requested a fee of \$5,830, representing 13 hours of attorney services at an hourly rate of \$425, and \$305 in costs.

² For work performed before the administrative law judge, claimant's counsel requested a fee of \$29,280, representing 61.25 hours of attorney services at an hourly rate of \$425, and \$3,248.75 in costs.

³ The administrative law judge specifically found that although she had previously granted employer's request for an extension to file its objections to claimant's counsel's fee application, employer nonetheless submitted its objections in an untimely manner. *See* Supp. Decision and Order at 1-3.

Employer challenges the district director's award of an attorney's fee to claimant's counsel, asserting that counsel's fee petition is facially deficient under 20 C.F.R. §702.132(a).⁴ Employer also contends the district director's Order does not identify the number of hours or hourly rate approved or adequately consider the applicable criteria of Section 702.132(a). Employer does not, however, challenge claimant's counsel's assertion in defense of his fee award that employer did not file objections to the fee application before the district director.⁵ As employer did not raise any objections to claimant's counsel's fee application before the district director, it cannot raise them for the first time on appeal.⁶ *See Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993),

⁴ 20 C.F.R. §702.132(a) states:

Any person seeking a fee for services performed on behalf of a claimant with respect to claims filed under the Act shall make application therefor to the district director, administrative law judge, Board, or court, as the case may be, before whom the services were performed (See 33 U.S.C. 928(c)). The application shall be filed and serviced upon the other parties within the time limits specified by such district director, administrative law judge, Board, or court. The application shall be supported by a complete statement of the extent and character of the necessary work done, described with particularity as to the professional status (e.g., attorney, paralegal, law clerk, or other person assisting an attorney) of each person performing such work, the normal billing rate for each such person, and the hours devoted by each such person to each category of work. Any fee approved shall be reasonably commensurate with the necessary work done and shall take into account the quality of the representation, the complexity of the legal issues involved, and the amount of benefits awarded, and when the fee is to be assessed against the claimant, shall also take into account the financial circumstances of the claimant. No contract pertaining to the amount of a fee shall be recognized.

⁵ The district director's Order does not state that employer filed any objections.

⁶ We note, in any event, that employer's challenge to the sufficiency of counsel's fee petition is without merit. The fee petition states that claimant's counsel performed all of the services documented in the application, describes the work performed and indicates the time requested for each service. *See Forlong v. American Security & Trust Co.*, 21 BRBS 155 (1988).

aff'd mem., 12 F.3d 209 (5th Cir. 1993); *see also Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995); *Clophus v. Amoco Prod. Co.*, 21 BRBS 261 (1988).

Additionally, contrary to employer's contention, the district director's Order sets forth the criteria of Section 702.132(a) and he awarded claimant's counsel an attorney's fee "in consideration of" those factors. *See generally Moyer v. Director, OWCP*, 124 F.3d 1378, 31 BRBS 134(CRT) (10th Cir. 1997). Moreover, contrary to employer's contention that it cannot be ascertained what hours and hourly rate the district director approved, the district director awarded the full sum claimed and thus it is a mathematical certainty that the district director approved the full number of hours and hourly rate counsel sought. Employer's legal challenge to the fee award thus is without merit. Consequently, we affirm the district director's fee award to claimant's counsel.

BRB No. 16-0553

In challenging the administrative law judge's fee award to claimant's counsel, we note that employer does not contend the administrative law judge erred in refusing to address its untimely filed objections. Rather, employer asserts that counsel's fee petition was facially deficient under Section 702.132(a) and that the fee requested should have been reduced to reflect claimant's limited success in obtaining benefits. As discussed, *supra*, employer's implied acknowledgement that it did not timely object to counsel's fee application precludes it from raising these objections for the first time on appeal. *See Watkins*, 26 BRBS 179; *Ross*, 29 BRBS 42; *Clophus*, 21 BRBS 261; *see also Biggs v. Ingalls Shipbuilding, Inc.*, 27 BRBS 237 (1993) (Brown, J., dissenting), *aff'd in part, part mem. sub nom. Ingalls Shipbuilding, Inc. v. Director, OWCP*, 46 F.3d 66 (5th Cir. 1995) (the Board will not address for the first time on appeal objections that the fee should be reduced to account for limited success).

We note, moreover, that the administrative law judge addressed claimant's counsel's fee request in light of Section 702.132(a). *See* Supp. Decision and Order at 3-4. The administrative law judge properly disallowed \$450 in costs and three hours of services performed by counsel prior to claimant's case being transferred to the Office of Administrative Law Judges, *see Stratton v. Weedon Eng'g Co.*, 35 BRBS 1 (2001) (en banc), but found the remaining time entries were sufficiently explained and were not clerical in nature, excessive, or duplicative. *See* Supp. Decision and Order at 4. In addition, in denying employer's motion for reconsideration, the administrative law judge addressed employer's objections to the adequacy of claimant's counsel's fee petition. *See* Order Denying Recon. at 1-2. Employer has failed to establish that the administrative law judge abused her discretion in finding the fee petition adequate. *See Forlong v. American Security & Trust Co.*, 21 BRBS 155 (1988). Thus, we reject employer's contentions and affirm the administrative law judge's fee award to claimant's

counsel. *See generally Pozos v. Army & Air Force Exch. Serv.*, 31 BRBS 173 (1997); *Welch v. Pennzoil Co.*, 23 BRBS 395 (1990).

Accordingly, the district director's Compensation Order Award of Attorney's Fees and the administrative law judge's Supplemental Decision and Order Denying in Part and Granting in Part Attorney's Fees and Costs and the Order Denying Employer/Carrier's Request for Partial Reconsideration are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief

Administrative Appeals Judge

JUDITH S. BOGGS

Administrative Appeals Judge

GREG J. BUZZARD

Administrative Appeals Judge